APPENDIX A — MEMORANDUM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED JANUARY 4, 2008

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-55256

NORTHFIELD INSURANCE COMPANY,

Plaintiff-counter-defendant-Appellee,

v.

ROYAL SURPLUS LINES INSURANCE COMPANY, a corporation,

Defendant-counter-claimant-Appellant.

MEMORANDUM*

Argued and Submitted December 4, 2007
Pasadena, California

Before BOWMAN,** BRUNETTI, and BYBEE, Circuit Judges.

---

* The Honorable Pasco M. Bowman, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appendix A

Royal Surplus Lines Insurance Company ("Royal") appeals the district court's partial grant of summary judgment to Northfield Insurance Company ("Northfield") and the district court's judgment after a bench trial. We affirm.

Because the parties are familiar with the facts and procedural history, we do not restate them here except as necessary to explain our disposition.

Under California law, a moving party can establish by undisputed facts a breach of the duty to settle in good faith as a matter of law. *See Sequoia Ins. Co. v. Royal Ins. Co. of America*, 971 F.2d 1385, 1392 n. 3 (9th Cir.1992); *Walbrook Ins. Co. v. Liberty Mut. Ins. Co.*, 7 Cal.Rptr.2d 513, 517 (Ct.App.1992). Here, the district court reached the only reasonable conclusion available to it: Royal breached the duty to act in good faith. The defense counsel's letters and the insurance expert's declaration are insufficient to undermine that conclusion. Therefore, the district court's partial grant of summary judgment in favor of Northfield was proper.

California law also provides that " '[a]n insurer's breach of its duty of good faith and fair dealing renders it liable for any damages which are the proximate result of that breach.' " *Larrabure Bros., Inc. v. Royal Indem. Co.*, 604 F.2d 1208, 1212 (9th Cir.1979) (quoting *Neal v. Farmers Ins. Exch.*, 582 P.2d 980, 988 (Cal.1978)). Therefore, the district court did not err when it allowed Northfield to recover settlement payments made in excess of its policy limits.

Finally, because Royal failed to raise its "final judgment" argument sufficiently for the district court to rule on, we decline to consider it now. *See In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir.1989).

AFFIRMED.

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION DATED JANUARY 23, 2006 AND FILED JANUARY 24, 2006

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

Case No. SA CV 03-0492 JVS (CWx)

NORTHFIELD INSURANCE COMPANY,

Plaintiff,

vs.

ROYAL SURPLUS LINES INSURANCE COMPANY, a corporation; and DOES 1 through 50, inclusive,

Defendants.

ROYAL SURPLUS LINES INSURANCE COMPANY, a corporation,

Counter-Claimant,

vs.

NORTHFIELD INSURANCE COMPANY, a corporation,

Counter-Defendant.

JUDGMENT

Appendix B

This matter came on before the Court for trial of ROYAL SURPLUS LINE'S INSURANCE COMPANY's ("ROYAL") First Amended Counterclaim against NORTHFIELD INSURANCE COMPANY ("NORTHFIELD").

The Court has previously granted summary judgment for NORTHFIELD and against ROYAL on NORTHFIELD's Complaint.. *See*, Partial Summary Judgment and Order Specifying Material Facts to be Without Substantial Controversy, Filed September 14, 2001 (Tevrizian, J.) ["September 14, 2001 Order"]; and Order Granting Plaintiff Northfield Insurance Company's Motion for Summary Judgment or, in the Alternative, for an Order Specifying Material Facts That Are Without Substantial Controversy on Northfield's First Amended Complaint, Aug. 27, 2001 (Tevrizian, J.) ["Aug. 27, 2001 Order"].

All remaining issues have been litigated through bench trial, and adjudicated per this Court's Memorandum of Decision filed herein on December 29, 2005, the September 14, 2001 Order, and the August 27, 2001 Order.

Accordingly, it is hereby ordered and decreed:

1. That judgment is for plaintiff, NORTHFIELD, on its Complaint in the sum of $7,155,274.08, plus pre-judgment interest thereon at 7% from August 10, 2000, to the date this Judgment is signed;

2. That judgment be for NORTHFIELD on the ROYAL First Amended Counterclaim, and that ROYAL take nothing by way of said Counterclaim;

3. That NORTHFIELD recover its costs in the sum of $_____; and

4. Pursuant to FRCP 54(b) the Court finds there is no just reason for delay and expressly directs the clerk to enter this final judgment in favor of NORTHFIELD and against ROYAL.

DATED: 1-23-06

s/ James V. Selna
The Honorable James V. Selna
United States District Court Judge

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING FILED FEBRUARY 27, 2008

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 06-55256

NORTHFIELD INSURANCE COMPANY,

Plaintiff-counter-defendant - Appellee,

v.

ROYAL SURPLUS LINES INSURANCE COMPANY, a corporation,

Defendant-counter-claimant - Appellant.

ORDER

Before: BOWMAN,* BRUNETTI, and BYBEE, Circuit Judges.

The panel has voted to deny appellant's petition for panel rehearing. Judge Bybee has voted to deny the petition for rehearing en banc, and Judges Bowman and Brunetti so recommend.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc is denied.

---

* The Honorable Pasco M. Bowman, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.